IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
SEATTLE DIVISION

KAREN STEWARD, an unmarried woman, on behalf of herself and all others similarly situated, Plaintiff, vs. BANK OF AMERICA, N.A., a foreign corporation, and MTC FINANCIAL INC., d/b/a TRUSTEE CORPS, and JOHN DOES 1-20, Defendants.	CASE COMPLAINT TO RESTRAIN NONJUDICIAL FORECLOSURE SALE & FOR DAMAGES ARISING OUT OF BREACH OF CONTRACT AND STATUTORY VIOLATIONS [JURY TRIAL DEMAND]

COMES NOW, KAREN STEWARD, an unmarried woman, hereinafter "Plaintiff," by and through the undersigned counsel, and files this lawsuit seeking to enjoin the nonjudicial foreclosure sale to be conducted by defendant MTC Financial Inc., d/b/a Trustee Corps., scheduled for April 22, 2016. Additionally, plaintiff seeks damages resulting from the defendants' unfair and deceptive business practice of foreclosure designed to divest property

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owners such as Plaintiffs without just cause and without compliance with applicable laws.

I. PARTIES, JURISDICTION, VENUE

1. Plaintiff is a resident of King County, Washington and owns the property known as 19472 SE 266th Street, Covington, WA 98042, and further identified legally as:

> LOT 2, TIMBERLANE ESTATE NO. 1, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 86 OF PLATS, PAGES 90 THROUGH 93, INCLUSIVE IN KING COUNTY, WASHINGTON
> A.P.N 865140-1020

hereinafter " the Property."

2. Defendant MTC FINANCIAL INC., D/B/A TRUSTEE CORPS. ("MTC") is a Washington corporation operating out of an address in Seattle, King County, State of Washington. MTC is a for-profit-trustee company that acts as an agent of loan servicers and lenders in effectuating the seizure and disposition of collateralized real property through non-judicial foreclosure under the Deed of Trust Act. MTC uses the mails, telephone, and other means to achieve its interstate business objectives.

3. Defendant BANK OF AMERICA, N.A., ("BANA") is a conglomerate which owns and/or services millions of residential loans, mostly on behalf of other entities. BANA is not the original lender but has claimed to be the present owner and beneficiary under the Deed of Trust plaintiff executed on May 4, 2007. Plaintiff executed said Deed of Trust in favor of another entity, Morgan Financial Inc. (**Exhibit A, Deed of Trust**).

4. Defendants John Does 1-50, are unknown at this time, but will be named and served accordingly as the information becomes known to Plaintiffs.

5. The Court has personal jurisdiction over the defendants and subject matter jurisdiction based on federal questions.

6. Venue is proper in the Western District of Washington.

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II. FACTS

7. On or about May 4, 2007, Plaintiff borrowed money from Morgan Financial, Inc., an Oregon corporation, ("Morgan"), which no longer exists. Defendant BANA claims to own and service the loan.

8. In 2013, while plaintiff was in the midst of repeatedly applying for a loan modification from BANA, a water pipe broke and the Property was flooded. Upon information and belief, BANA received insurance proceeds for the repair of the pipe and restoration of the Property but did not apply those proceeds toward the repair of the Property. As a result of Bank of America's failure to promptly repair and restore, plaintiff's home was infested with mold so severely that it became toxic for anyone to live there. Plaintiff was forced to move out and has been staying with friends ever since.

9. The Deed of Trust, paragraph 5, "Property Insurance," affirmatively requires that "Unless Lender and Borrower agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration of the Property." BANA retained the insurance proceeds but failed to restore the Property to its condition prior to the flooding.

10. BANA failed to apply the insurance proceeds to the restoration to the Property pursuant to paragraph 5 of the Deed of Trust. BANA also failed to apply the insurance proceeds pursuant to paragraph 2 of the Deed of Trust.

11. Even though BANA knew that its conduct (failure to repair the Property), would result in plaintiff's homelessness, BANA never acknowledged that its failure to promptly repair and restore the home to a habitable condition divested the Plaintiff of her right to occupy/possess the Property. Moreover, BANA continued to send debt collection

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correspondence and threatened foreclosure repeatedly since Plaintiff made her last payment in October of 2009.

12. Where BANA knew that the Property was uninhabitable, it did not proceed to foreclose in a timely manner. Rather, BANA delayed the foreclosure while reporting derogatory trade line information to the major credit bureaus for more than six years. BANA's inaction kept plaintiff in a limbo state in which she remains homeless and her credit is destroyed. Plaintiff could not even qualify to rent an apartment or a home for herself and her son as a result of BANA's conduct.

13. At the end of 2015, BANA finally hired defendant MTC to commence nonjudicial foreclosure against Plaintiff and the Property. In the Notice of Default posted on the Property, MTC announced that the Deed of Trust dated May 2, 2007, was "to secure obligations in favor of MORTGAGE ELECTRONIC REGISTRATION SYSTEM, INC., ('MERS'), as designated nominee for ORGAN FINANCIAL INC, Beneficiary". These assertions are patently untrue. Plaintiff does not know who MERS is. Plaintiff does not know who "ORGAN FINANCIAL INC." is and she has had no dealings with either of these entities at any time.

14. The Notice of Default issued by MTC on or about October 20, 2015 and executed by Patrick Lynch, "Authorized Signatory," informed the Plaintiff that she could reinstate the loan through MTC at 1700 Seventh Avenue, Suite 2100, Seattle, WA 98101. The Notice of Default acknowledges that Plaintiff's last payment was made in November of 2009, more than six years ago (**Exhibit B, Notice of Default**).

15. On its face, the Notice of Default demands amounts that are obviously inaccurate. For example, it stated that the total late charges due were $377.50. This averages $5.39 per month for late fees or charges. Where the standard late fee of mortgage is .05% of the

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monthly mortgage, and where BANA and MTC contend Plaintiff's monthly mortgage payments ranged from $975.71 to $1344.63 during the default period, the total late charges accrued between December 1, 2009 and October 20, 2015, could not be $377.50, as alleged in the Notice of Default.

16. Upon information and belief, defendant MTC was hired by BANA to conduct nonjudicial foreclosure of the Property. Upon information and belief, MTC received information about plaintiff, the Property, and the Mortgage Loan via a web-based third-party computer portal or platform, in order to effectuate the nonjudicial foreclosure. It is via this computer portal that MTC receives work orders and transmits progress reports to its master, BANA. Thus, tasks are automated and human involvement is minimal.

17. As the trustee designated to conduct the foreclosure, MTC has an affirmative duty of good faith, which encompasses the duty to at least conduct a cursory investigation of information transmitted and received via this computer portal. A cursory investigation would have revealed that any attempt to collect the subject loan is time-barred. A cursory investigation would have revealed that the Property is uninhabitable due to flooding, mold, and that the damages were irreparable given the length of time BANA has taken to foreclose. A cursory investigation would have revealed that the figures contained within the Notice of Default are facially inaccurate.

18. The defendants' collective conduct has made it necessary for Plaintiff to retain counsel to investigate various violations of law. On April 1, 2016, Plaintiff, through the undersigned counsel, conveyed to BANA notice that litigation will be commenced pursuant to the Deed of Trust, paragraphs 15 and 22, thus fulfilling the condition precedent mandated by the Deed of Trust.

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19. The Notice of Trustee's Sale recorded on or around December 21, 2015, asserts that "MTC Financial Inc. dba Trustee Corps." constitutes the "Duly Appointed Successor Trustee." **(Exhibit C**, **Notice of Trustee's Sale)**. The Notice of Trustee's Sale refers to Organ Financial Inc., an entity that either does not exist or has nothing to do with the subject Property. The Notice of Trustee's Sale issued by MTC was executed by Patrick Lynch, "Authorized Signatory" and informed the Plaintiff that she could reinstate the loan through MTC at 1700 Seventh Avenue, Suite 2100, Seattle, WA 98101.

20. The Notice of Foreclosure served on the Plaintiff on or about December 18, 2015, demands payment in the amount of $92,739.57 as of April 11, 2016. Additionally, MTC demanded $2,420.55 as "Beneficiary's Advances, Costs, and Expenses Due to Reinstate as of April 11, 2016." (**Exhibit D, Notice of Foreclosure**). Where BANA had previously accelerated the loan back in 2009, at the present, through MTC, BANA contends the entire loan is accelerated: "… you must pay a total of $249,258.49 in principal, $42,358.74 in interest, plus other costs and advances estimated to date in the amount of $291,617.23." The Notice of Foreclosure issued by MTC was executed by Patrick Lynch, "Authorized Signatory" and informed the Plaintiff that she could reinstate the loan through MTC at 1700 Seventh Avenue, Suite 2100, Seattle, WA 98101.

21. Upon information and belief, Trustee Corps., is a foreign corporation incorporated in Oregon. Trustee Corps. does possess a Washington business license under UBI 602993799.

22. MTC Financial Inc. is a Washington corporation, UBI 602615842. Upon information and belief, Patrick Lynch was identified as an **Assistant Secretary** of MTC Financial Inc. on or about June 19, 2015.

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23. Upon information and belief, on September 10, 2015, MTC filed an Amended Report with the Secretary of State of Washington which identified Rande Johnsen as President and Chair of the MTC Board, Terry Johnsen as Secretary/Treasurer, and Jessica Cimarusti as **Assistant Secretary** of the company.

24. Upon information belief, on February 16, 2016, MTC Financial Inc. filed an Annual Report with the Washington Secretary of State which identified Jessica Cimarusti as MTC Financial Inc.'s Registered Agent and **Secretary**. The Annual Report also identified Terry Johnsen as Secretary/Treasurer of the corporation.

25. Upon information and belief, MTC updated its service of process address with the Secretary of State on or about March 1, 2016. The Washington Secretary of State website indicates that Ms. Cimarusti can accept service of process on behalf of MTC Financial Inc. at 500 Union Street #620, Seattle, Washington 98101. The Secretary of State website report for MTC also associates Ms. Cimarusti with 1700 7th Avenue, # 2100, Seattle, Washington 98101, the same address reflected in the Notice of Default, Notice of Trustee's Sale and Notice of Foreclosure. **(Exhibit E, Secretary of State Report)**. However, MTC vacated 1700 7th Avenue, # 2100, Seattle, WA 98101 approximately one month ago. **See Declaration of Linda Stephenson**.

26. Upon information and belief, MTC Financial Inc. dba Trustee Corps did not inform homeowners with pending foreclosures of its move from 1700 7th Avenue, # 2100, Seattle, WA 98101 500 Union Street #620, Seattle, Washington 98101.

27. Plaintiff has suffered monetary damages, including relocation expenses, monthly expenses relating to alternative living arrangement, investigative costs, time lost from work, inability to obtain credit and lack of credit standing to rent a home or apartment, and other

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tangible costs associated with defendants' misconduct.

28. Plaintiff has suffered certain intangible damages as a result of defendants' conduct, including diminution of quality of life and comfort of a home, emotional distress including physical manifestation through physical symptoms, shame and humiliation from credit damage.

III. CAUSES OF ACTION

FIRST CAUSE OF ACTION: BREACH OF DEED OF TRUST, FAILURE TO APPLY INSURANCE PROCEEDS TO RESTORE THE PROPERTY AND/OR APPLY INSURANCE PROCEEDS CONSISTENT WITH THE DEED OF TRUST PROVISIONS

29. Plaintiff re-alleges all of the foregoing facts as asserted in support of the following causes of action.

30. Defendant BANA breached paragraph 5 of the Deed of Trust by failing to apply the insurance proceeds toward the restoration of the Property.

31. Defendant BANA breached paragraph 2 of the Deed of Trust by failing to apply the insurance proceeds in the specific manner mandated by the Deed of Trust.

32. BANA's failure to repair and restore Plaintiff's residence dispossessed her of her residence and caused her to suffer nonfinancial losses and to incur substantial financial losses to mitigate her damages.

SECOND CAUSE OF ACTION: BREACH OF GOOD FAITH AND FAIR DEALING

33. Plaintiff re-alleges all of the foregoing facts as asserted in support of the following causes of action.

34. Plaintiff alleges that BANA has violated the implied duty of good faith and fair dealing which accompanies the Note and Deed of Trust. Under Washington law, "[t]here is in every contract an implied duty of good faith and fair dealing" that "obligates the parties to

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cooperate with each other so that each may obtain the full benefit of performance." *Badgett v. Sec. State Bank*, 116 Wn.2d 563, 569, 807 P.2d 356 (1991). In particular, the duty of good faith and fair dealing arises "when the contract gives one party discretionary authority to determine a contract term." *Goodyear Tire & Rubber Co. v. Whiteman Tire, Inc.*, 86 Wn. App. 732, 738, 935 P.2d 628 (1997).

35. Accordingly, BANA breached the implied duty of good faith and fair dealing by retaining the insurance proceeds without complying with the provisions of the Deed of Trust where it knew for certain that such action would render plaintiff homeless and cause her to suffer non-economic as well as economic damages.

THIRD CAUSE OF ACTION: ANY EFFORT TO COLLECT ON THE NOTE OR TO FORECLOSE ON THE PROPERTY IS TIME BARRED AS THE STATUTE OF LIMITATIONS HAS EXPIRED

36. Plaintiff re-alleges all of the foregoing facts as asserted in support of the following causes of action.

37. The non-judicial foreclosure sale scheduled by MTC to occur on April 22, 2016 would occur more than six years after Plaintiff made her last payment on the loan and after BANA accelerated the mortgage loan.

38. RCW 4.16.040(1) provides an "action upon a contract in writing" must be commenced within six years after breach.

39. RCW 62A.3-118(a) provides an action to enforce payment obligations undertaken in a negotiable instrument "must be commenced within six years after the due date or dates stated in the note" or "within six years after [an] accelerated due date".

40. RCW 4.16.040(3) provides that an action "for the use and occupation of real estate" must be commenced within six years.

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41. RCW 62A.3-118(a) codifies common law treatment of the application of RCW 4.16.040(1) which has long been subject to a court-created rule for debts payable by installment (Installment Payment Rule) which provides that absent acceleration, a separate cause of action arises on each installment, and the statute of limitations runs separately against each. *Herzog v. Herzog*, 23 Wn. 2d 382, 388, 161 P.2d 142 (1945).

42. The effect of acceleration is to cause all unpaid principal and accrued interest to become due immediately in a single installment rendering the Installment Payment Rule moot: "Except as provided in subsection (e), an action to enforce the obligation of a party to pay a note payable at a definite time must be commenced within six years after the due date or dates stated in the note or, if a due date is accelerated, within six years after the accelerated due date." RCW 62A.3-118(a).

43. Because breach occurred on or before December 1, 2009, but acceleration did not occur until December 18, 2015, and the non-judicial sale is being scheduled for April 22, 2016, the non-judicial action has been taken after the applicable statute of limitations had expired.

44. Even in the face of the Installment Payment Rule, any action to acquire the property or have it sold to satisfy the debt is barred by RCW 4.16.040(3). The logic of this limitation is overwhelmingly simple. Allowing accumulation of interest, fees and cost over six years to destroy the equity accumulated by the borrower in the Subject Property is inherently unjust and inequitable

45. The defendant's ability to foreclose under contract or statute has expired even if installments remain due and owing because the cause of action of foreclosure accrued on the initial breach and default and any action thereon is barred by RCW 4.16.040(3).

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46. RCW 4.16.040(3) permits a lender to "indulge" a borrower for six years before bringing a suit to foreclose a mortgage after which the lender is restricted to obtaining a money judgment on the note for past due installments.

47. Plaintiff may pursue a quiet title action pursuant to RCW 7.28, et.seq. Chapter 7.28 RCW permits "[a]ny person having a valid subsisting interest in real property, and a right to the possession thereof" to recover the same in the superior court wherein the property is situated. RCW 7.28.010.

48. In such actions, "the superior title, whether legal or equitable" prevails. RCW 7.28.120. A mortgagee is merely a lienor and may not "recover possession of the real property, without a foreclosure and sale according to law." RCW 7.28.230. As the fee simple owners of the property the Plaintiffs presumptively have title superior to all other claimants. In fact, any lien asserted by any of the defendants depends upon the superiority of Plaintiffs' title. Deed of Trust at 3 ("Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property".).

49. Plaintiff, as the owner of the Property may therefore quiet title against such a lien "where an action to foreclose such [lien] would be barred by the statute of limitations" converting a borrower's defeasible fee simple title to fee simple absolute by operation of law. RCW 7.28.300.

FOURTH CAUSE OF ACTION: VIOLATION OF THE FAIR DEBT COLLECTION PRACTICES ACT

50. Plaintiff re-alleges all of the foregoing facts as asserted in support of the following causes of action.

51. The Fair Debt Collection Practices Act, 15 USC § 1692f states that "A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt."

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This includes:

(6) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if—

(A) there is no present right to possession of the property claimed as collateral through an enforceable security interest.

52. Defendants are debt collectors.

53. Through MTC, BANA is taking non-judicial action to affect dispossession of the Property and therefore has violated and continues to violate the FDCPA.

54. MTC, on behalf of BANA, initiated non-judicial foreclosure proceedings against plaintiff and the Property, when neither entity had the legal to possession of the Property claimed as collateral due to the expiration of the statute of limitations.

55. 15 USC §1692e(2)(A) prohibits any debt collector from using false, deceptive, or misleading representation or means in connection with the collection of any debt. The defendants violated this particular provision of the statute in misrepresenting the debt as legally enforceable when it is in fact stale and time-barred.

FIFTH CAUSE OF ACTION: VIOLATION OF THE WASHINGTON CONSUMER PROTECTION ACT

56. Plaintiff re-alleges all of the foregoing facts as asserted in support of the following causes of action.

57. Defendants by their collective conduct violated the Washington Consumer Protection Act ("CPA"). The CPA prohibits "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." *RCW 19.86.020*. A private cause of action exists under the CPA if (1) the conduct is unfair or deceptive, (2) occurs in trade or commerce, (3) affects the public interest, and (4) causes injury (5) to plaintiff's business or

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property. *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 780, 719 P.2d 531 (1986). An act or practice is deceptive if it has the capacity to deceive a substantial portion of the public. *Id*. at 785. An act or practice may be unfair if it offends public policy, is unmoral, unethical, oppressive, or if it causes injury to consumers. *See Klem v. Washington Mutual Bank,* 176 Wn.2d 771, 295 P.3d 1179 (2013); *Magney v. Lincoln Mut. Sav. Bank*, 34 Wn. App. 45, 659 P.2d 547 (1984).

58. Plaintiff alleges that defendants' business model of deliberately using and relying on a third-party computer portal or platform to foreclose on real property without conducting an investigation into the status of the Loan, the conditions of the Property, and accurate amounts due is unfair and deceptive. The defendants' business model has been practiced in trade or commerce and has inflicted economic harm to the borrowers' property, including the subject Property. In this case, the defendants appear to have failed to communicate and provide each other with accurate information including the most elementary information about the Loan of the Property. This practice defies the legislative intent in enacting the Deed of Trust Act, which is to allow foreclosure to occur without any oversight by the government or the judiciary. The defendants' business practice causes the process of nonjudicial foreclosure fraught with errors and problems where the borrowers bear the greatest risk: losing their biggest financial investment without due process of law.

59. BANA's act of taking insurance proceeds but not applying them to repair and restore the Property, thereby rendering plaintiff homeless, is an unfair and deceptive act. Said act occurred in trade or commence, affects an important public interest, and damaged plaintiff's property.

60. The third element of the *Hangman* test, the public interest requirement, is

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presumptively met based on the volume of mortgages in the country and in Washington State in which BANA and MTC are involved in as loan servicer and trustee. The foregoing-mentioned conduct injures not only the Plaintiffs and those who are similarly situated but also threatens the integrity of the nonjudicial foreclosure system and undermines public confidence. This satisfies the third element of the *Hangman* test.[1]

A. MTC Financial Inc. dba Trustee Corps. Violated the Consumer Protection Act Because It Failed to: (1) Communicate Its Location to Homeowners, (2) Comply with Deeds of Trust Act Requirements to Serve as a Nonjudicial Foreclosure Trustee; and (3) Conduct an Independent Investigation of the Facts

61. The Deeds of Trust Act (Chapter 61.24 RCW) ("DTA") creates a three-party mortgage system allowing lenders, when payment default occurs, to nonjudicially foreclose by trustee's sale. The act furthers three goals: (1) that the nonjudicial foreclosure process should be efficient and inexpensive, (2) that the process should result in interested parties having an adequate opportunity to prevent wrongful foreclosure, and (3) that the process should promote stability of land titles. *Bain v. Metropolitan Mortgage Group, Inc.*, 175 Wn.2d 83, 94, 285 P.3d 34 (2012); *Cox v. Helenius*, 103 Wash.2d 383, 387, 693 P.2d 683 (1985); *Albice v. Premier Mortg. Servs., Inc.*, 174 Wn.2d 560, 567, 276 P.3d 1277 (2012).

62. Because the Act dispenses with many protections commonly enjoyed by borrowers under judicial foreclosures, lenders must strictly comply with the statutes and courts must strictly construe the statutes in the borrower's favor. **Exhibit F**, ***Hooker v. Bank of America***, Memorandum Opinion, King County Superior Court 14-2-11009-0, citing *Bain v Metropolitan Mortgage Group, Inc.*, 175 Wn.2d at 93-94, 285 P.3d 34; *Albice v. Premier Mortg.*

[1] *Bavand v. One West, supra.* ("As in *Bain*, the alleged acts of MERS were done in the course of its business, and MERS's listing as a "beneficiary" was a generalized practice that was a course of conduct repeated in hundreds of other deeds of trust.

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Servs., Inc., 174 Wn.2d at 567, 276 P.3d 1277 (2012); *Udall v. T.D. Escrow Servs., Inc.*, 159 Wn.2d 903, 915–16, 154 P.3d 882 (2007); *Koegel v. Prudential Mut. Sav. Bank*, 51 Wn.App. 108, 111–12, 752 P.2d 385 (1988). The procedural requirements for conducting a trustee sale are extensively spelled out in RCW 61.24.030 and RCW 61.24.040. Procedural irregularities, such as those divesting a trustee of its statutory authority to sell the property, can invalidate the sale. *Udall,* 159 Wash.2d at 911, 154 P.3d 882; *Albice v. Premier Mortg. Servs., Inc.*, 174 Wn.2d at 567, 276 P.3d 1277 (2012).

i. <u>MTC Violated the CPA Because It Failed to Comply with the Minimum Statutory Qualifications Prescribed by the Deeds of Trust Act to Act as a Nonjudicial Foreclosure Trustee</u>.

63. RCW 61.24.010(1) provides:

> (1) The trustee of a deed of trust under this chapter shall be:
> (a) Any domestic corporation or domestic limited liability corporation incorporated under Title 23B, 25, *30, 31, 32, or 33 RCW of which at least one officer is a Washington resident; …

The Plaintiff alleges that MTC violated the DTA because MTC falsely represented that a low level employee who is not an actual officer has been named as an officer in order to try to meet the requirements of the Deed of Trust Act.

64. Pursuant to the Washington Business Corporation Act, the terms “officers” and “assistant officers” are not interchangeable terms. An “officer” is appointed by a corporation’s board of directors. RCW 23B.08.400(1). By contrast, an “assistant officer” is appointed by a “duly appointed officer.” RCW 23B.08.400(2). “Assistant officers” answer to “officers” and they necessarily have a lower rank than officers in the corporate hierarchy.

65. The Deeds of Trust Act requires at least one “officer” to be a Washington resident. RCW 61.24.010(1)(a). It does not state that at least one officer “or assistant officer” must be a state resident. A person with the rank of “assistant officer” does not satisfy the

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"officer" requirement of RCW 61.24.010(1)(a).

66. Here, MTC failed to comply with RCW 61.24.010(1)(a) because it designated Patrick Lynch as an Assistant Secretary from on or about June 19, 2015 through September 2, 2015. MTC subsequently designated Jessica Cimarusti as "Assistant Secretary" of the company from September 3, 2015 through February 15, 2016. Thus, at the time MTC issued and executed the Notice of Default, Notice of Foreclosure, and Notice of Trustee's Sale, it lacked an officer residing in Washington as required by RCW 61.24.010(1)(a). Thus, MTC was not legally qualified under Washington law to act as the Successor Trustee of the Plaintiff's Deed of Trust; and MTC therefore violated the DTA when it prepared, recorded, and/or served the Notice of Default, Notice of Foreclosure and Notice of Trustee's Sale.

67. Plaintiff also believes that Jessica Cimarusti is merely a low level employee who is not an actual officer notwithstanding MTC's designation of her as an officer. According to the Washington Secretary of State website report for MTC, both Jessica Cimarusti and Terry Johnsen are identified as "Secretary" of the corporation.

68. Trustee Corps., an Oregon corporation, the "doing-business-as" name in which MTC is conducting the nonjudicial foreclosure of Plaintiff's Property, does not constitute a domestic corporation.

iii. MTC Violated the CPA by Failing to Communicate Its New Address to Homeowners at Imminent Risk for Foreclosure

69. In 2015, MTC issued the Plaintiff a Notice of Default, Notice of Trustee's Sale, and Notice of Foreclosure that listed its address as 1700 7th Avenue, # 2100, Seattle, Washington. However, as of at least March 1, 2016, it was impossible for the Plaintiff and similarly situated homeowners who received notices containing the 7th Avenue address to access this office to affect personal service or speak with a representative of MTC because it had been

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closed. Thus, the address that MTC provided to borrowers in the foreclosure process became false, incorrect, and useless to the borrower on or about March 1, 2016. Moreover, upon information and belief, MTC did not inform borrowers who had received a Notice of Default, Notice of Trustee's Sale, and Notice of Foreclosure bearing the 1700 7th Avenue, # 2100, Seattle, Washington address that this office had closed and moved to 500 Union Street, Suite 620, Seattle, Washington.

70. These misleading representations in MTC's Notices of Default, Notices of Trustee's Sales, and Notices of Foreclosure concerning its physical presence at 1700 7th Avenue, # 2100, Seattle, Washington were unfair or deceptive because they had the capacity to send borrowers and their representatives on a wild goose chase to locate MTC's office to try to stop a foreclosure sale by serving a lawsuit and motion to restrain the sale as mandated by RCW 61.24.130.

71. These misleading representations concerning MTC's street address(es) were unfair or deceptive because they had the capacity to send borrowers and their representatives on a wild goose chase to locate MTC's office to try to stop a foreclosure sale by curing the default on their loan. Indeed, payments to the trustee to cure a default and stop a trustee's sale "shall be tendered to the trustee in the form of cash, certified check, cashier's check, money order, or funds received by verified electronic transfer, or any combination thereof." RCW 61.24.090(7). Borrowers unable to locate or access MTC's office(s) due to the misleading representations and practices described above would be unable to use four of the five statutorily specified payment methods. Under Washington law, a foreclosing trustee owes a duty of good faith to the borrower. See RCW 61.24.010(4).

72. The Washington Supreme Court had described the trustee's power to sell a

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borrower's property - often the family home - as "incredible." *Klem v. Washington Mut. Bank,* 176 Wn.2d 771, 295 P.3d 1179 (2013).

73. It is an unfair practice under the Consumer Protection Act, and a breach of the trustee's duty of good faith to the borrower, for a trustee to exercise the "incredible" power to sell a borrower's property when it knows or should know that it has not strictly complied with the Deeds of Trust Act.

74. It is an unfair practice under the Consumer Protection Act, and a breach of the trustee's duty of good faith to the borrower, for a trustee to exercise the "incredible" power to sell a borrower' s property when it has rendered its street address, of which it was statutorily required to inform the borrower in writing, see RCW 61.24.040(1)(f) inaccurate or inaccessible. MTC at all relevant times knew or should have known that on at least March 1, 2016, its Seventh Avenue was closed and could not be accessed by borrowers.

75. Thus, it is unfair for MTC to conduct a trustee's sale on any property for which the Notice of Default, Notice of Trustee's Sale, and Notice of Foreclosure erroneously identified its address as 1700 7th Avenue, # 2100, Seattle, Washington. **Exhibit G, *State of Washington v. Quality Loan Service Corporation of Washington***, King County Superior Court case 14-2-06236-2.

76. It is also unfair for MTC to conduct a trustee's sale on any property for which the Notice of Trustee's Sale was issued on or before March 1, 2016, because RCW 61.24.030(6) requires the trustee to maintain its physical presence at a street address continuously from the date of the Notice of Trustee's Sale to the trustee's sale itself.

77. These unfair or deceptive acts occur in trade or commerce, and affect the public interest because MTC issued numerous Notices of Trustee's Sale for properties in King and

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Pierce Counties during the relevant time period, and upon information, many more in other Washington counties, for which completing the foreclosure process would violate RCW 61.24.030(6), and/or otherwise be unfair or deceptive.

78. The Plaintiff requests that the Court declare the acts and practices described above are unfair or deceptive under RCW 19.86.020, and violate the Consumer Protection Act.

iii. <u>MTC Violated the CPA Because It Failed to Conduct an Impartial Investigation of the Facts</u>

79. Plaintiff alleges that in its capacity as successor trustee, MTC failed to act consistent with the duty of an "impartial judicial officer" as required by the Deed of Trust Act. “In a nonjudicial foreclosure, the trustee undertakes the role of the judge as an impartial third party who owes a duty to both parties to ensure that the rights of both the beneficiary and the debtor are protected.” *Klem v. Wash. Mut. Bank*, 176 Wn.2d 771, 295 P.3d 1179 (2013).

80. MTC’s failure to conduct a cursory investigation into the legal status of the debt, the background of the Loan, including the fact that BANA had failed to apply insurance proceeds to restore the Property, and the accuracy of the amounts demanded is proof that MTC did not conduct the cursory investigation required of the trustee and therefore violated the duty of good faith under the Deed of Trust Act.

SIXTH CAUSE OF ACTION: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

81. Plaintiff re-alleges all of the foregoing facts as asserted in support of the following causes of action.

82. Plaintiff alleges that by their conduct, defendants have intentionally inflicted emotional distress upon her. The tort of outrage or intentional infliction of emotional distress is proven by: (1) extreme and outrageous conduct, (2) intentional or reckless infliction of

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emotional distress, and (3) resulting in severe emotional distress.

83. Plaintiff has been dispossessed of her Property by virtue of BANA's taking the insurance proceeds but not applying them to repair and restore the Property. BANA's conduct of continuing to report the mortgage loan as being in default for many years after the Property had become uninhabitable, but not taking possession of the Property via foreclosure or any other means is outrageous because it keeps plaintiff in a physical as well as a financial limbo.

84. By having to endure defendants' relentless and continued effort to collect a debt that has been stale caused Plaintiff severe physical and emotional distress.

PRAYER FOR RELIEF & DAMAGES

Having stated her allegations and claims, Plaintiff prays the Court for the following relief:

1. An Order declaring the nonjudicial foreclosure proceedings as initiated by the defendants are time-barred;

2. An Order declaring the proposed April 22, 2016 nonjudicial foreclosure unlawful and enjoining the same;

3. An Order declaring defendant BANA in breach of the enumerated provisions of the Deed of Trust, and of the Implied Duty of Good Faith and Fair Dealing;

4. An award of damages under the CPA for injury and damages, including treble damages, and attorney's fees and costs;

5. An Award of Compensatory Damages under the FDCPA, including emotional distress and reasonable attorney's fees and costs.

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DATED this 7th of April, 2016.

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/s/ V. Omar Barraza

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